



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 3, 1996

Ms. Elizabeth A. Lunday
Assistant City Attorney
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0137

OR96-0656

Dear Ms. Lunday:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 39330.

The City of Mesquite Police Department (the "department") has received a request for the arrest and offense reports pertaining to the arrest of an individual on or about July 18, 1995. You contend that the information requested is excepted from required public disclosure under sections 552.101 and 552.108 of the Government Code.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You contend that Family Code section 58.007 makes the requested information confidential.¹ Family Code sections 58.007, 58.102, and 58.106 essentially replaced section 51.14. Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 53, 1995 Tex. Sess. Law Serv. 2517, 2552-53, 2555. Section 51.14 is part of Title 3 of the Family Code, which is entitled "Delinquent Children and Children in Need of Supervision." Although the arrest of the subject individual concerns the kidnapping of a child, the subject himself was an adult at the time of the offense.

¹The section you cite was added by the Seventy-fourth legislature. Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 53, 1995 Tex. Sess. Law Serv. 2517. However, this amendment applies only to conduct that occurs on or after January 1, 1996. *Id.* § 106, 1995 Tex. Sess. Law Serv. at 2591. "Conduct that occurs before January 1, 1996, is governed by the law in effect at the time the conduct occurred, and that law is continued in effect for that purpose." *Id.* The requested information concerns conduct that occurred before January 1, 1996. Accordingly, the section you raised would not apply to the requested information.

Consequently, section 51.14 is inapplicable to the requested information. You may not withhold any of the requested information pursuant to section 552.101 of the Government Code in conjunction with section 51.14 of the Family Code.

The information submitted for our review does appear to contain criminal history record information ("CHRI") that appears to have been generated by the Texas Crime Information Center ("TCIC") or the National Crime Information Center ("NCIC"). The dissemination of CHRI obtained from the NCIC network is limited by federal law. *See* 28 C.F.R. § 20.1; Open Records Decision No. 565 (1990) at 10-12. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 (1990) at 10-12. Sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release the information except to another criminal justice agency for a criminal justice purpose, Gov't. Code § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090 - .127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations, *see* Open Records Decision No. 565 (1990), and any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. In addition, as for CHRI generated within Texas, common-law privacy prohibits the disclosure of such information to anyone other than the subject of the information. *See Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177, 188 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision Nos. 616 (1993), 565 (1990). Therefore, all CHRI must be withheld from public disclosure under section 552.101 of the Government Code.

We next address your assertion that section 552.108 protects the requested information from required public disclosure. Section 552.108 excepts from disclosure:

- (a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime
- (b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution

When applying section 552.108, this office distinguishes between information relating to cases that are still under active investigation and those that are closed. Open Records Decision No. 611 (1992) at 2. In cases that are still under active investigation, section 552.108 excepts from disclosure all information except that generally found on the first page of the offense report. *See generally Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd*

n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976) at 3-4. Once a case is closed, however, information may be withheld under section 552.108 only if its release "will unduly interfere with law enforcement or crime prevention." See Open Records Decision No. 553 (1990) at 4 (and cases cited therein).

You assert that the requested information relates to an active prosecution and/or investigation of various crimes. We have examined the information at issue and conclude that, except for "first page offense report" material contained therein, which *Houston Chronicle* held to be open, you may withhold it under section 552.108. See *Houston Chronicle Publishing Co*; Open Records Decision No. 127 (1976).²

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Todd Reese
Assistant Attorney General
Open Records Division

RTR/rho

Ref.: ID# 39330

Enclosures: Submitted documents

cc: Mr. Jim Willett
News Assignments Manager
KDFW-TV / KDFI-TV
400 North Griffin Street
Dallas, Texas 75202
(w/o enclosures)

²You argue that even this "first page" information may be protected from required public disclosure because the arrestee may have some privacy interest at stake, namely because "many individuals arrested for crimes are wholly innocent." However, "false light" privacy is no longer a proper consideration under section 552.101. Open Records Decision No. 579 (1990) at 3-8; see also *Cain v. Hearst Corp.*, 878 S.W.2d 577 (Tex. 1994) (State of Texas does not recognize tort of false light invasion of privacy).